

## Internal Revenue Service

Department of the Treasury  
Washington, DC 20224

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Telephone Number:

Refer Reply To:  
CC:PSI:B02  
PLR-123878-09  
Date:  
October 15, 2009

LLC =

Date =

State =

Dear

This responds to a letter dated March 5, 2009, and subsequent information, submitted on behalf of LLC, requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to file an election under § 301.7701-3(c) to be treated as a corporation for federal tax purposes, and relief to file a late S corporation election under § 1362(b)(5).

The information submitted states that LLC was formed on Date as a limited liability company under the laws of State. LLC intended to elect to be treated as an association taxable as a corporation and to elect to be treated as an S corporation for federal tax purposes, with both elections effective Date. However, neither Form 8832, Entity Classification Election, nor Form 2553, Election by a Small Business Corporation, was timely filed.

Section 301.7701-3(a) provides that a business entity that is not classified as a corporation under § 301.7701-2(b)(1), (3), (4), (5), (6), (7), or (8) (an eligible entity) can elect its classification for federal tax purposes under § 301.7701-3.

Section 301.7701-3(b)(1)(ii) provides that unless a domestic entity elects otherwise, the entity is disregarded as an entity separate from its owner if it has a single owner.

Section 301.7701-3(c)(1)(iii) provides that an election under § 301.7701-3(c)(1)(i) will be

effective on the date specified on Form 8832 or on the date filed if no such date is specified on the form. The effective date specified on Form 8832 cannot be more than 75 days prior to the date the form is filed and cannot be more than 12 months after the date on which the form is filed.

Section 301.9100-1(c) provides that the Commissioner has discretion to grant a reasonable extension of time under the rules set forth in §§ 301.9100-2 and 301.9100-3, to make a regulatory election, or a statutory election (but no more than six months except in the case of a taxpayer who is abroad), under all subtitles of the Code, except subtitles E, G, H, and I. Section 301.9100-1(b) defines a regulatory election to include an election whose due date is prescribed by a regulation published in the Federal Register.

Section 301.9100-2 provides the rules governing automatic extensions of time for making certain elections.

Section 301.9100-3 sets forth the standards the Commissioner will use to determine whether to grant an extension of time for regulatory elections that do not meet the requirements of § 301.9100-2. Under § 301.9100-3, a request for relief will be granted when the taxpayer provides evidence to establish to the satisfaction of the Commissioner that (1) the taxpayer acted reasonably and in good faith, and (2) granting relief will not prejudice the interests of the Government.

Section 1362(a) provides that a small business corporation may elect to be an S corporation.

Section 1362(b) provides the rule on when an S election will be effective. Generally, if an S election is made within the first two and one-half months of a corporation's taxable year, then the corporation will be treated as an S corporation for the year in which the election is made. Section 1362(b)(3) provides that if an S election is made after the first two and one-half months of a corporation's taxable year, then the corporation will not be treated as an S corporation until the taxable year after the year in which the S election is made.

Section 1362(b)(5) provides that if (1) an election under § 1362(a) is made for any taxable year after the date prescribed by § 1362(b) for making the election for the taxable year or no § 1362(a) election is made for any taxable year, and (2) the Secretary determines that there was reasonable cause for the failure to timely make the election, then the Secretary may treat the election as timely made for such taxable year and § 1362(b)(3) shall not apply.

Based solely on the information submitted and the representations made, we conclude that the requirements of § 301.9100-3 have been satisfied. As a result, LLC is granted an extension of time of 60 days from the date of this letter to file a Form 8832 with the appropriate service center, election to be treated as an association taxable as a corporation for federal tax purposes effective Date. A copy of this letter should be attached to the election.

In addition, based solely on the facts submitted and the representations made, and provided that LLC otherwise qualifies as an S corporation, we conclude that LLC will be recognized as an S corporation effective Date. A Form 2553 along with a copy of this letter must be forwarded to the appropriate service center within 60 days from the date of this letter.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Sincerely,

Curt G. Wilson  
Associate Chief Counsel  
(Passthroughs & Special Industries)

Enclosures (2)  
Copy of this letter  
Copy for § 6110 purposes

cc: